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March 24, 1999

VIA TELECOPY AND OVERNIGHT MAIL

Muthu Sundram, Esq.
Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency - Region II
290 Broadway, 17th Floor
New York, NY 10007

Re: LCP Chemicals Site - Draft Consent Order

Dear Mr. Sundram:

As you requested, ISP Environmental Services Inc. has reviewed the proposed modifications to the Consent Order and Scope of Work. ISP's comments to the Scope of Work are attached. The following are ISP's comments to the revised draft Consent Order.

1. In paragraph 8, please delete the parenthetical referring to ISP Environmental Services Inc. as successor to GAF Corporation. ISP Environmental Services Inc. is not successor to GAF Corporation and this should not be reflected as such in the findings of fact.

2. In the seventh line of paragraph 8, please insert the word "Corporation" after the reference to GAF.

3. Please delete the last three sentences of paragraph 8; ISP Environmental Services Inc. does not agree with these findings.

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4. With respect to paragraph 10 of the findings, ISP Environmental Services Inc. does not agree that leaching of contaminants into South Branch Creek is ongoing, nor does ISP agree that Pralls Island could be impacted. Please delete these sentences from paragraph 10.

5. Please replace paragraph 11 with a simple finding that mercury is a contaminant of concern at the site.

6. With respect to paragraph 13, please add "DuPont and Allied Signal" to the list of potentially responsible parties.

7. In paragraph 14(a), please delete the words, "predecessor to ISP Environmental Services Inc.".

8. ISP requests the extension of the stipulated deadlines. This is particularly important to ISP because, in many instances, it will be awaiting comments from EPA before proceeding, and is also subject to stipulated penalties if deadlines are missed. Therefore, we request the following changes:

a. Extend to ninety (90) days the deadline to submit the RI/FS work plan. Extend to twenty-four (24) months the deadline for submission of the final FS report.

b. Extend from twenty-one (21) days to thirty (30) days the deadline for responding to EPA's comments on the work plan.

c. Extend from twenty-one (21) days to thirty (30) days, the deadline for responding to comments on the field operations plan.

d. In Task III, extend from forty-five (45) days to sixty (60) days the deadline for submittal of validated analytical data.

e. Extend from seven (7) days to fourteen (14) days of completion of field activities.

f. The deadline for notifying EPA in writing of completion of these activities extend from thirty (30) days to sixty (60) days.

g. The deadline for submission of a technical memorandum for identification of candidate technologies should be extended from thirty (30) days to sixty (60) days.

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h. Extend from twenty-one (21) days to thirty (30) days the deadline for responding to EPA comments to this memorandum.

i. In Task V - Treatability Studies, extend the twenty-one (21) day deadline for responding to EPA comments to thirty (30) days in each instance.

j. In Task VII, extend from forty-five (45) days to sixty (60) days the time period to make the presentation to EPA and the state concerning the findings of the RI. I

k. In Task VIII, extend from twenty-one (21) days to thirty (30) days the deadline for responding to EPA comments.

l. In Task IX, Feasibility Study Report, extend from twenty-one (21) days to thirty (30) days the deadline for responding to EPA comments.

9. Based on the information known on this site on contaminants and areas of concern and the redundancy of the requested information, ISP requests the elimination of the following: The Site Characterization Summary Report, The Preliminary Findings of the RI With Remedial Action Objectives and Screening of Remedial Alternatives, The Draft RI Report and FS Report. ISP believes these requirements can be stream lined and the intent of this work met by preparing a draft RI Report (Task VIII) and focus FS Report (Task IX).

10. ISP is concerned about paragraph 50. Given that LCP is in bankruptcy and, we understand that the property has been abandoned by the trustee, it is not clear how ISP can gain access to this site. We understand, however, that EPA does have a prior determination from the bankruptcy court establishing its rights vis-a-vis the property. Please provide us a copy of the documents received from the Bankruptcy Court establishing EPA's rights as to the property. ISP also objects to any requirement that it pay compensation to LCP to gain access to the property. LCP is itself a PRP for this site and should not be entitled to be reimbursed or paid for access in connection with the remediation. This sentence must be deleted from paragraph 50. In the event ISP cannot obtain access to the property, it should be up to EPA to obtain that access at no cost to ISP. These access concerns provide yet another basis for transferring the lead on this case to NJDEP so that ISP may take advantage of the access provisions under state law.

11. With respect to Paragraph 20, ISP does not admit that it is a responsible party under CERCLA. ISP is willing to enter into a Consent Order and to conduct the RI/FS without any admission of liability on its part in an effort to settle the matter without the need for litigation. Language reflecting this needs to be added to Paragraph 20 even though it is present elsewhere in the order.

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12. ISP requests that the required progress reports, be submitted on a quarterly, rather than a monthly basis. This request is made due to the time frame usually involved in undertaking remedial investigation and feasibility studies. Therefore, monthly progress reports should be unnecessary. Also, that (2) of this paragraph dealing with all results and data during the previous month, be deleted.

13. In paragraph 56, extend the deadline for submitting reports concerning data validity from fifteen (15) days to thirty (30) days.

14. ISP requests that the dispute resolution provisions be expanded as ISP has seen previously in other EPA Consent Orders. I have enclosed a copy of the dispute resolution provisions from the Piciullo Superfund site in Region One which we believe can be used a model for a better dispute resolution mechanism that would be expanded to include all potential disputes between the parties.

15. With respect to stipulated penalties, ISP requests that a provision be added that any disputed stipulated penalties be paid into escrow until resolution through the ADR process.

16. Given the short deadlines imposed in the Order, even with the extensions requested, the amounts of the stipulated penalties provided are excessive. The amount set forth in paragraphs 65, 66, and 67 should all be reduced by 50%.

17. Paragraph 68 should clearly indicate that continual accrual of stipulated penalties is tolled during the dispute resolution process.

18. In Paragraph 72, please delete the last sentence.

19. In Paragraph 76(B), please provide a cap on reimbursement of all response costs including oversight costs at \$85,000. As ISP is the only LCP site participant, we believe that it is appropriate for the USEPA to seek recovery of any further oversight costs from non-participating PRPs or to consider making this concession in view of the fact that at the site there is such a large orphan share not accounted for.

20. Please delete the second sentence in paragraph 77.

21. ISP continues to be concerned about the financial assurance and insurance indemnification provisions of the Consent Order. First, with respect to paragraphs 88 and 89, ISP notes that it has provided self-guaranty in performance of the remediation on an adjacent property. A self-guaranty should be all that is necessary for financial assurance. Moreover, it is not clear whether EPA intends to allow ISP to draw funds out of the trust account or financial

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instrument to pay for the Remedial Investigation/Feasibility Study activities on a quarterly basis as the work progresses. The provisions for replenishing these funds make no sense if this is not the case. If this is the case, a requirement to pay these funds into a trust account or a quarterly bases, makes no sense. ISP therefore requests that these paragraphs be deleted or replaced with a provision for a self-guaranty.

22. ISP questions the need for the CGL insurance in the amount of \$10,000,000 for Remedial Investigation/Feasibility Study work specified in paragraph 90. ISP does not recall seeing similar insurance requirements in other Consent Orders it has executed. Please provide the basis for this requirement. As an alternative, ISP suggests that the provision be limited to the insurance requirements applicable to contractors performing work for ISP.

23. ISP is concerned with respect to paragraph 62. The Consent Order contemplates an ongoing exchange of information between the parties in that documents submitted by ISP will be modified to reflect EPA comments. To the extent EPA requires modifications to documents, they should not be deemed of unacceptable quality so as to trigger stipulated penalties. Paragraph 62 has to be modified to indicate this reality.

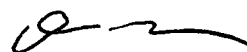
24. ISP requests that a provision for a "covenant not to sue" as long as respondent is in compliance with the Consent Order be inserted.

25. ISP requests that a provision for "contribution protection" be specified in this Consent Order.

26. When ISP indicated its concern over the holding in United States v. Occidental Chemical Corp., (1998 WL883722, (M.D. Pa.), you informed us that the wording in this Consent Order would take that decision into account and not be a bar prohibiting the government or ISP being able to recover past response costs from non-settling parties. Therefore, this wording should be inserted to address this concern.

ISP looks forward to continuing discussions with you to finalize the terms of this Order. As I mentioned to you in our prior communications, if it makes sense for us to meet face to face to finalize this document, we would be happy to do so.

Very truly yours,



DENNIS M. TOFT

DMT:jmc

cc: Patricia Simmons (via telecopy)